

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT
BETWEEN

SCI 2013 01477

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 004 134 441)

Plaintiff

and

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN
FUNDS MANAGEMENT LIMITED (RECEIVER & MANAGER APPOINTED)
(ACN 105 684 231) IN ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE
TIMBERCORP ORCHARD TRUST & ORS

Defendants

AFFIDAVIT OF JEYARASA RASIAH

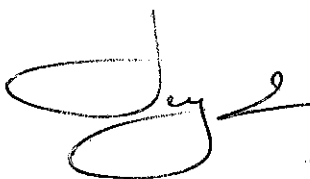
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Filed on behalf of: The Third Defendant
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I, **JEYARASA RASIAH** of 41/31 Colley Terrace, Glenelg in South Australia, make oath and say that:

- 1 I together with my wife Anne am the Third Defendant in this proceeding.
- 2 I am currently retired. Until my retirement in 2006, I was the owner and Managing Director of LynAir Australia Pty Ltd, an international logistics business based in Sydney. I had also worked in management roles in a number of other businesses.
- 3 I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true.
- 4 By order made 19 July 2014, my wife and I were ordered to act as representative defendants in this proceeding on behalf of the members of the 2005 Timbercorp Table Grape Project (ARSN 113 512 236) (**Project**).
- 5 Where I received any correspondence or documents at my email address, I printed off copies and provided them to my wife Anne.
- 6 On 3 October 2013, I received an email from Mr Yu-chiao Hsueh of M+K Lawyers addressed to my wife Anne and me that enclosed copies of the Plaintiff's settlement offer (**Offer**). Now produced and shown to me marked **confidential exhibit JR-1** is a true copy of the email from M+K Lawyers to me dated 3 October 2013 with its enclosures, including a draft Deed of Compromise. The email is privileged and my wife Anne and I do not waive that privilege.

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Jeyarasa J.A.
13/05/2014

- 7 In between receiving this email and subsequently attending a telephone conference with my wife Anne, Messrs Garry Bigmore QC and Samuel Hopper of Counsel and Mr Yu-chiao Hsueh of M+K Lawyers, I read and considered the Offer.
- 8 On 15 November 2013, I attended a telephone conference with my wife Anne, Messrs Garry Bigmore QC and Samuel Hopper of Counsel and Mr Yu-chiao Hsueh of M+K Lawyers. During this telephone conference, Counsel provided their advice to me and Anne verbally and indicated that a written advice would be provided to us afterwards.
- 9 I recall asking a number of questions about the proceeding and the advice which were answered during this conversation. Towards the end of our conversation, I instructed M+K Lawyers that we accepted the Offer on the basis of the advice given to us as I believed it was in my best interest and the best interests of the other growers in the Project to accept the Offer.
- 10 On 18 November 2013, M+K Lawyers provided me with a copy of Counsel's written advice to my email address. I read and understood Counsel's written advice and did not change my instructions as I still considered it to be in my best interest and the best interests of the other growers in the Project to accept the Offer.
- 11 On about 20 December 2013, I was provided with the final Deed of Compromise with a letter explaining the changes to the deed since I was originally provided with the original draft in October 2013. As I considered the changes did not affect my belief that the Offer was in my best interest and the best interests of the other growers in the Project, I signed the Deed of Compromise.

Sworn by JEYARASA RASIAH)

at GLENELG in the State of South Australia)

this 13TH day of May 2014)

Before me: J.P.)

*A Justice of the Peace in and
for the State of South Australia.*
ROBERT JOHN HUGHES J.P. 21013

**4 BYRON STREET
GLENELG SA 5045**